



DEPARTMENT OF BANKING AND CONSUMER FINANCE

STATE OF MISSISSIPPI

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TO: Mortgage Company Licensees and Other Interested Parties

FROM: Traci McCain
Director, Mortgage Division

DATE: August 10, 2007

RE: Proposed Amended Regulations for the Mississippi Mortgage Consumer Protection Law

The Mississippi Department of Banking and Consumer Finance is proposing amendments to the existing Regulations dated July 1, 2006, governing the Mississippi Mortgage Consumer Protection Law. During the 2007 General Session of the Mississippi Legislature, Senate Bill 2350 was passed and was signed into law by Governor Haley Barbour with an effective date of July 1, 2007. The purpose of these proposed regulations is to set guidelines to be followed by licensees in regards to the Mississippi Mortgage Consumer Protection Law.

Pursuant to the Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq., Miss. Code Ann., notice is hereby given this date to the Secretary of State, State of Mississippi, and all other persons required by statute to receive advance notice of this agency's rule-making proceedings that the current mortgage company regulations are being amended. Enclosed are the proposed mortgage company regulations, the changes of which are in bold and underlined.

Any comments you may have concerning these proposed regulations must be received in writing on or before Monday, September 10, 2007. Please submit your comments addressed to: Traci McCain, Director, Mortgage Division, at one of the following addresses:

Mississippi Department of Banking & Consumer Finance
P.O. Box 23729
Jackson, Mississippi 39225-3729

OR

501 N West Street, Suite 901A
Jackson, Mississippi 39201

Also, comments may be emailed to tmccain@dbcf.state.ms.us. After the required comment period, and provided that no significant changes are required, the adopted regulations will be filed with the Secretary of State, State of Mississippi, and the proposed effective date of the adopted Regulations will be on October 15, 2007.

**STATE OF MISSISSIPPI
DEPARTMENT OF BANKING AND CONSUMER FINANCE
MORTGAGE DIVISION**

**MISSISSIPPI MORTGAGE CONSUMER
PROTECTION LAW**

REGULATIONS



Compiled by the
Department of Banking and Consumer Finance
For licensees governed by the
Mississippi Mortgage Consumer
Protection Law

John S. Allison, Commissioner
Dated: October 15, 2007

State of Mississippi
Department of Banking and Consumer Finance
Mortgage Division

MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW

REGULATIONS

SECTION 1. Purpose

These regulations are promulgated pursuant Section 81-18-1, et seq., Mississippi Code of 1972, Annotated, also known as the Mississippi Mortgage Consumer Protection Law (MMCPL), and other applicable statutes to establish administrative procedures required by the Mississippi Department of Banking and Consumer Finance. These Regulations shall be applicable to licensees and registrants under the Mississippi Mortgage Consumer Protection Law. These Regulations are not intended to create any private right, remedy, or cause of action in favor of any borrower or against any Licensee or are these Regulations intended to apply to any business transaction of a Licensee not covered by Mississippi Law. While these Regulations are intended to and do supersede all prior Rules, Regulations and Guidelines of the Department of Banking and Consumer Finance, these Regulations are intended only to clarify the existing law (both statutory and regulatory) governing the mortgage business. These Regulations do not create any new or substantive rights in favor of any borrower or against any licensee or registered company, regardless of whether the loan was made prior to or after the effective date of these Regulations.

SECTION 2. Exemptions

- (a) Persons authorized to engage in business as a bank holding company or as a financial holding company, or any **direct** wholly owned subsidiary thereof, is exempt from the provisions of the **MMCPL**, with the exception of having to file a notification statement on an annual basis. A financial holding company would include a thrift holding company.
- (b) Any person authorized to engage in business as a bank, credit card bank, savings bank, savings institution, savings and loan association, building and loan association, trust company or credit union under the laws of the United States, any state or territory of the United State, or the District of Columbia, the deposits of which are federally insured, or any **direct** wholly owned subsidiary thereof. A federally insured institution would include those insured by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Association (NCUA).

SECTION 3. Loan Originators

Loan originators are required to register per Section 81-18-5(m), Mississippi Code of 1972, Annotated, and to follow specific requirements outlined in this section.

- 1. Loan originators include W-2 employees as well as 1099 employees.
- 2. If a loan originator leaves a licensed mortgage broker or lender to register with another **licensee**, then the initial application must be completed to apply with the new company. This includes the initial application fee of \$100.00 and a new completed fingerprint card.

SECTION 3. Loan Originators (continued)

3. A letter from the licensed mortgage broker or lender stating the loan originator's last employed date must be mailed to the Department within thirty (30) days of his/her last day of employment stating that the loan originator is no longer employed by the mortgage broker or lender. This letter must be received before a new loan originator registration will be approved **for that person**.
4. The movement from one licensed mortgage broker or lender to another licensed mortgage broker or lender does not waive the requirement of approved continuing education for the loan originator **to renew**.
5. The loan originator must work from the **licensed** office listed on the loan originator application.
6. The Department will deny the application if the residential address of the loan originator is greater than One-Hundred Twenty-five (125) miles from the location of the mortgage broker or lender that is listed on the Loan Originator's Application for Registration.
7. **A person must provide proof of one (1) year of prior mortgage lending experience within the two (2) years prior to the date of application. Proof of experience includes, but is not limited to: letter(s) from previous or current employers stating job description, copies of other state licenses, etc. Resumes and W-2 forms may be included, but are not sufficient proof of experience. If the experience does not include experience on Mississippi residential mortgage lending, then the person shall complete an approved course of a minimum of four (4) hours on the Mississippi Mortgage Consumer Protection Law and pass an examination covering the course material.**
8. **If a person does not possess the required one (1) year of mortgage lending experience, then he/she shall complete a minimum of twenty-four (24) hours of education as approved by the Mississippi Association of Mortgage Brokers, the National Association of Mortgage Brokers, the Mortgage Bankers Association or the Mortgage Bankers Association of Mississippi for the experience waiver. At least four (4) of the required hours must be an approved course on the Mississippi Mortgage Consumer Protection Law and proof of passage of an examination covering the course material.**

SECTION 4. Licensing Criteria

- (a) In order to determine the applicant's suitability for a license, the Commissioner shall forward the fingerprints submitted with the application to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. The Commissioner may request a new set of fingerprints at any time from any person licensed or registered with the department.
- (b) Within fifteen (15) business days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this act, the Department shall either grant or deny the request for license. If the application is withdrawn or denied, the license fee is non-refundable. **Final verification of the background check does include any subsequent investigation that must occur to determine the disposition of an arrest indicated on the background check.**

SECTION 4. Licensing Criteria (continued)

- (c) A person must be named the principal officer for a company applying for a mortgage broker or lender license.
 - 1) Principal Officer means an employee of the mortgage broker or lender who submits documentation of a minimum of two (2) years experience **within the previous four (4) years of the date of application** directly in mortgage lending. Proof of experience includes, but is not limited to: letter(s) from previous or current employers stating job description, copies of other state licenses, etc. Resumes **and W-2 forms** may be included, but are not sufficient proof of experience.
 - 2) **If the required mortgage lending experience does not include experience on Mississippi residential mortgage lending, then the principal officer must complete an approved course on the Mississippi Mortgage Consumer Protection Law and pass an examination covering the course material.**
 - 3) The residency of the principal officer must be within 125 miles of the mortgage broker or lender's address listed on their main license with the Department.
 - 4) This person is not required to be an owner or co-owner of the company.
 - 5) The principal officer must register as a loan originator and meet the requirements as outlined in the MMCPL.
 - 6) **The Principal Officer** will have to complete twelve (12) hours of approved continuing education in order for the mortgage broker or lender to renew their mortgage broker or lender license. **The twelve (12) hours must include at least two (2) hours of approved courses on the Mississippi Mortgage Consumer Protection Law.**
 - 7) The principal officer may only work for one mortgage broker or lender at the address listed on the company's main license with the Department.
- (d) **All approved educational courses that are required for pre-licensure and/or renewal of a license or registration are approved by the Mortgage Bankers Association, the National Association of Mortgage Brokers, the Mississippi Association of Mortgage Brokers or the Mortgage Bankers Association of Mississippi. Once a course has been approved by one of these organizations, the organization or association will submit it to the Department. If the subject matter is the Mississippi Mortgage Consumer Protection Law, then the Department will approve the course also. If the subject matter is another state's specific law course, that course shall not be used for loan originator pre-licensure or continuing education hours with the Department.**

SECTION 5. Change in Location, Name, Principal Officer, Loan Originator

- (a) Each licensee shall notify the Department, in writing, of any change in address of its principal place of business or of any additional location of business or any change of officer, director, or principal of the licensee within thirty (30) days **prior to** the change. Failure to notify the Department, in writing, will cause the company to be issued a civil money penalty.
- (b) Each company shall notify the Department, in writing, when a loan originator resigns or is released from the employment of a licensed mortgage broker or lender within thirty (30) days. Failure to notify the Department, in writing, within the thirty days will cause the broker or lender to be issued a civil money penalty.

SECTION 6. Branch Offices

- (a) Wholesale lending offices only (have no direct contact with a consumer) are not required to be licensed. No origination or any type of consumer contact may occur at this location.
- (b) A branch office will be considered “open” if the signage is in place, a business license has been applied for and approved, advertising has been placed and/or there is an unlocked door or no signage on the door indicating that the branch office is closed or not yet open for business. If the branch is considered “open” without prior approval from the Department, then a civil money penalty will be issued to the company and possible denial of the branch license.
- (c) The branch office must display the original issued branch license, not a copy, in a place visible to the public.

SECTION 7. Requirements For In-State Offices

Each principal place of business and branch office in the state of Mississippi shall meet all of the following requirements:

- (a) The location shall be in compliance with local zoning ordinances; however, zoning shall not be residential. For initial application and/or renewal of principal office and branch office, documentation must be provided to the Department of the zoning of the area where the office is to be located. This documentation should include a letter from the City or County on their official letterhead stating the zoning of the property. A Privilege Tax License is not sufficient proof of zoning.
- (b) The location shall consist of at least one room that is secure, enclosed and private in order that mortgage business may be conducted in a private location. The room must be in a building of secure construction. This does not include portable buildings. The mortgage office may be located inside of another type of business; however, signage must indicate the presence of this office and must follow the above guidelines, as well as any guidelines required by regulation of the other business.

SECTION 8. Advertisements

Advertisements are considered to be in print or by electronic means and do include internet websites and advertisements. Business cards are considered by the Department to be a form of advertisement and must meet the requirements for such.

SECTION 9. Required Contents of Individual Borrower Files

The required mortgage company files will be kept at the main office location listed on the broker or lender’s license. If the licensee wishes to keep the files at a different location, then the licensee must first submit a written request to the Commissioner and gain prior approval before this can occur.

SECTION 9. Required Contents of Individual Borrower Files (continued)

The individual borrower files of a mortgage broker and lender shall contain at least the following items. **Please note, that the use of correction fluid on any document associated with the mortgage loan, which includes, but are not limited to the below listed items, is considered a fraudulent activity.**

The original or copy (unless otherwise specified below) of all documentation dated and signed by the borrower and/or loan originator, including, but not limited to:

- *Application – copy of the original signed and dated by the mortgage company
- Credit File (Authorizations to order credit report, verifications, credit reports, etc)
- *Appraisal and invoice from appraiser – complete copy of appraisal
- Right of Rescission
- Broker or Co-Broker Agreement
- *Good Faith Estimate – within 3 working days of taking application. If mailed, must have copy of cover letter stating date mailed and address where the GFE was mailed to
- Preliminary Truth in Lending (within 3 days of the application date)
- Servicing Disclosure (if funding the loan)
- Notice of Right to Receive Copy of Appraisal
- Controlled Business Agreement (when applicable)
- Proof of Assignment (transfer) of loan (if applicable)**
- Equal Credit Opportunity Act disclosure (within 3 days of application)
- Fair Lending
- *Lock-in agreement from lender
- *Copy of Turndown (if applicable)
- Copy of Notice of Cancellation from Broker / Lender
- *Mortgage Origination Agreement (sample one on website) containing specific statements
- *Final HUD Settlement Statement – copy of signed original
- Final Truth In Lending – for all Lenders or Brokers who table fund – at settlement
- Promissory Note (copy)
- Deed of Trust (copy)
- * Final HUD 1003 Application – signed and dated**

* Required by Section 81-18-33, Miss. Code Ann.

These records are to be maintained for a minimum of 36 months from the date of the loan application, **maintained in a secure format and maintained separately from any and all other business records, including mortgage company records concerning property located outside of Mississippi. If the licensee wishes to keep the files in a location other than the location listed on the license, then the licensee first must submit a written request on a form designated by the Department and gain written approval before storing the files at an off-site secure location. An off-site secure location would include a storage facility with security, etc and would not include a person's home, unless this is the licensed location of the mortgage broker or lender.** The Commissioner in his sole discretion, after giving written notice, may require records to be maintained for a longer period of time. The following federal regulations may also be used as guides to supplement the minimum recordkeeping requirements stated above: Regulation B, Regulation X, and Regulation Z. However, the requirements outlined above are separate and apart from any record keeping requirements stated in federal regulations. Compliance with the provisions of this policy cannot be relied upon for ensuring compliance with federal regulations.

SECTION 10. Penalties assessed by Department

The company or loan originator, once assessed a penalty by the Department, will have thirty (30) days in order to pay the full amount of the penalty, unless otherwise noted by the Department.

SECTION 11. Journal of Mortgage Transactions

Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on the license.

- (a) The journal may be in electronic or handwritten format.
- (b) The journal is to include:
 - 1) Name of applicant(s) and co-applicant(s)
 - 2) Date of Application – **if the entry is for a prequalification (no subject property is identified), then this must be notated on the journal.**
 - 3) Disposition of loan application, indicating date of loan funding, loan denial, withdrawal and name of lender if applicable

SECTION 12. Lock-in Fee and Lock-in Agreements

Lock-in Fee:

- 1) May be collected by the broker only on behalf of the lender.
- 2) If the broker collects the fee on the lender's behalf and the fee is made payable to the broker, then the fee must be placed in the broker's escrow account until it is transferred to the lender.
- 3) The mortgage broker may not charge or collect a lock-in fee that is not on behalf of a named lender.
- 4) If the lock-in fee is refundable, then the lock-in agreement is to state if the consumer will receive payment back in the form of a check or in the form of a reduction of origination fees at closing from the mortgage company.

SECTION 13. Annual Reports

Each company shall annually, on or before March 31, file a written report with the Department containing the December 31 information on a form prescribed by the Department. If the company fails to file this report by March 31, then the licensed mortgage broker or mortgage lender shall be subject to a late penalty of Ten Dollars (\$10.00) for each day after March 31 the report is delinquent, but in no event shall the aggregate of late penalties exceed Two Hundred Dollars (\$200.00).

SECTION 14. Guidance on Nontraditional Mortgage Product Risks

The Department is incorporating the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators “Guidance on Nontraditional Mortgage Products Risks”, which was issued on November 14, 2006, into Department Regulations. It is attached to these Regulations and may be found in Appendix A. In addition, this Guidance will be incorporated into the Examination of all licensed Mortgage Brokers and Mortgage Lenders.